

**COURT OF APPEALS
DECISION
DATED AND FILED**

NOVEMBER 25, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1470-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

COVAN A. GAVITT,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Marathon County:
VINCENT K. HOWARD, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Covan Gavitt appeals judgments convicting him of two counts of kidnapping, two counts of false imprisonment, second-degree sexual assault, possession of a firearm by a felon, operating a vehicle without consent, attempted burglary and resisting arrest. He argues that the court erred when it joined the counts alleging kidnapping and false imprisonment of Pamela C. with

the counts alleging numerous crimes perpetrated on Diane K. He also argues that the court improperly exercised its discretion when it admitted evidence of other crimes he committed against Diane K. in other counties. We reject these arguments and affirm the judgments.

The kidnapping and false imprisonment of Pamela occurred on August 28, 1994, when Gavitt offered her a ride home and instead took her to a garage where he tied her up. He told her that he wanted to rape her and kill her because he wanted someone else to feel the pain he had been through. He also told her that if she had not been the victim, another woman would have been because “he was planning on it in his mind.” Gavitt transported Pamela to another location where she managed to escape.

The next day, Gavitt gave Diane a ride to his hotel room in Portage County where he threatened her with a knife, tied her up and sexually assaulted her. He then took her and her car to Wausau where he acquired a firearm and then drove her to Vilas County where he again sexually assaulted her. He continued to constrain her until August 31 when he drove her back to Marathon County where he again sexually assaulted her. Later, he called a police officer who managed to trace the call, resulting in Gavitt's apprehension.

The trial court properly joined the charges relating to Pamela with those relating to Diane. The joinder statute is construed broadly in favor of initial joinder. *Francis v. State*, 86 Wis.2d 554, 558, 273 N.W.2d 310, 312 (1979). To justify joinder, the separate crimes must be of the same type of offense, occurring over a relatively short period of time and the evidence as to the multiple counts must overlap. See *State v. Hamm*, 146 Wis.2d 130, 139, 430 N.W.2d 584, 588 (Ct. App. 1988). Evidence is overlapping when, if the charges were tried

separately, the evidence regarding one charge would be admissible at the trial of the other as “other crimes evidence” under § 904.04(2), STATS. *See State v. Hall*, 103 Wis.2d 125, 141-42, 307 N.W.2d 289, 296 (1981). Here, the evidence of each crime would have been admissible at separate trials because it was part of a common plan or scheme, it established Gavitt’s motive, intent and knowledge and furnished a jury with the context for the crimes that is necessary for a full presentation of the case. *See State v. Shillcutt*, 116 Wis.2d 227, 236, 341 N.W.2d 716, 720 (Ct. App. 1983). This evidence was not more prejudicial than probative. Gavitt’s statements to Pamela described the crimes he perpetrated against Diane starting the next day. Both sets of crimes were near in time, place, and circumstance, making them highly probative of Gavitt’s plan, knowledge and intent. The danger of any unfair prejudice was diminished by two curative instructions limiting the jury’s use of the other crimes evidence.

The trial court properly exercised its discretion when it admitted evidence of other crimes perpetrated against Diane K. in other counties. This court will sustain the trial court’s discretionary decision to admit evidence if there is a reasonable basis for the decision. *See State v. Plymesser*, 172 Wis.2d 583, 591, 493 N.W.2d 367, 371 (1992). The trial court admitted this evidence to establish Gavitt’s motive, plan, intent, knowledge and the context of the crimes that occurred in Marathon County. Without this information, the jury would have had an incomplete account of the crimes, knowing only that Diane K. was tied up in Gavitt’s car while he attempted a burglary and procured a weapon. The jury would then learn that two days later they drove to Wausau where a sexual assault occurred at a motel. If the jury had not been informed about the entire ordeal, they might well have formed unreasonable doubt because, out of context, the parties’ behavior appears inexplicable. The danger of unfair prejudice was again

substantially reduced by the court's curative instructions. The court also directed the prosecutor to limit the amount of detail concerning the abduction, false imprisonment, and allowed the prosecutor to ask leading questions in order to limit the detail concerning these other episodes.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

